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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-657

Filed: 18 December 2018

N.C. Industrial Commission, I.C. No. TA-25705

JONATHAN E. BRUNSON, Plaintiff,

v.

NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY, NORTH CAROLINA PRISONER LEGAL SERVICES, INC., and THE STATE OF NORTH CAROLINA, Defendants.

Appeal by Plaintiff from decision and order filed 6 September 2017 and order filed 23 March 2018 by the North Carolina Industrial Commission. Heard in the Court of Appeals 26 November 2018.

Jonathan E. Brunson, Plaintiff-Appellant, pro se.

Attorney General Joshua H. Stein, by Assistant Attorney General Barry H. Bloch, for Defendants-Appellees.

McGEE, Chief Judge.

Jonathan E. Brunson (“Plaintiff”) appeals from two orders from the North Carolina Industrial Commission (“Industrial Commission”) dismissing his claims against Defendants under the North Carolina Tort Claims Act (“Tort Claims Act”),

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N.C. Gen. Stat. § 143-291, *et seq.*, and his motions for entry of default and default judgment.

I. Factual and Procedural History

Plaintiff filed a claim on 13 June 2016 with the Industrial Commission pursuant to the Tort Claims Act. Plaintiff alleged that the above-named Defendants breached their duties to provide him — an inmate in the custody of the North Carolina Department of Public Safety, Division of Adult Correction (“DPS”) — legal assistance and access to the courts. Plaintiff alleged Defendants’ breach was due to North Carolina Prisoner Legal Services, Inc.’s (“PLS”) failure to timely file either a Motion for Appropriate Relief or a Petition for Writ of Habeas Corpus on Plaintiff’s behalf. The record on appeal contains only the portion of Plaintiff’s claim identifying himself, Defendants, where the alleged injury occurred, and a description of the duty owed to him by Defendants. However, the record on appeal does not contain the portion of Plaintiff’s claim that describes Defendants’ alleged breach or Plaintiff’s alleged damages in the amount of \$10,000.00.

The North Carolina Department of Justice (“DOJ”) filed an answer on behalf of “Defendant, North Carolina Department of Public Safety,” along with an affirmative defense, a motion to dismiss, a motion to stay discovery, and a motion for protective order, on behalf of DPS on 12 July 2016. DOJ’s motion to dismiss alleged that the Industrial Commission did not have subject matter jurisdiction over

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Plaintiff's claims against PLS, as PLS was not a state agency, that the alleged events occurred outside the statute of limitations, and that Plaintiff raised policy questions not within the jurisdiction of the Industrial Commission.

Plaintiff filed a "Declaration for Entry of Default" on 15 August 2016, contending that the State of North Carolina had failed to respond to his claim. Plaintiff alleged DOJ's answer, filed on behalf of DPS, had failed to identify the State of North Carolina as a defendant in the action. Plaintiff also filed a "Motion for Default Judgment against the State of North Carolina" on 3 October 2016. Defendants filed a response to Plaintiff's Motion for Default Judgment on 17 November 2016. Defendants filed a "Motion for Leave to Amend" and a copy of an amended answer, which included a motion to dismiss pursuant to N.C. Gen. Stat. § 1A-1, Rule 12(b)(6) for failure to state a claim upon which relief could be granted. DOJ's amended answer sought to alter the introductory paragraph to include correct Defendants. None of the above filings are included in the record on appeal.

Plaintiff filed an "Amended Motion for Default Judgment" on 3 January 2017, seeking to amend his prior motion to note that he sought one million dollars in damages. **R11.** Plaintiff filed an "Addendum to Declaration for Entry of Default" and an "Addendum to Motion for Default Judgment" on 21 March 2017. Plaintiff filed a "Motion for Summary Judgment" against DPS on 12 July 2017. These additional filings are also not included in the record on appeal.

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A pretrial conference was held on 19 July 2017. Plaintiff appeared and argued that his motion for default should be granted in regard to the State as the State was not listed in Defendants' response and had therefore failed to respond. When asked to argue the merits of his claim, Plaintiff first argued that DPS, PLS, and the State had a duty to provide him with access to the courts and had breached that duty when the attorney for PLS failed to file timely petitions for post-conviction relief. Next, Plaintiff argued that DPS and the State had failed to ensure that PLS rendered effective representation. Finally, Plaintiff argued that, as a third-party beneficiary, Plaintiff was owed duties under the contract between the State, DPS, and PLS, those duties were breached, and the breach was the proximate cause of his injury.

Special Deputy Commissioner Brian Liebman filed a decision and order on 6 September 2017 ("6 September 2017 order") finding that Plaintiff had "failed to assert a potential claim for negligence over which the Industrial Commission would have jurisdiction." The 6 September 2017 order held that the Industrial Commission did not have subject matter jurisdiction over any claim made against PLS because "[t]he Industrial Commission has subject matter jurisdiction only over claims of negligence against employees or agents of state agencies." Therefore, Plaintiff's claims against PLS were dismissed under N.C. Gen. Stat. § 1A-1, Rule 12(b)(1).

The 6 September 2017 order dismissed any of Plaintiff's claims that challenged the State or State agencies' policies and procedures. Those policies and procedures

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are “a function of the executive branch of government, and as such, [are] not subject to [judicial] oversight.” The 6 September 2017 order held that, to the extent Plaintiff’s claims relied on a breach of contract, the Industrial Commission did not have subject matter jurisdiction as the Industrial Commission only has jurisdiction over claims for negligence. Similarly, the 6 September 2017 order found that “to the extent Plaintiff asserts that DPS and the State have a legal duty to provide him access to the courts,” violations of constitutional rights are outside the jurisdiction of the Industrial Commission and, therefore, granted Defendants’ motion to dismiss and dismissed Plaintiff’s claims with prejudice.

Plaintiff appealed to the full Industrial Commission, which reviewed the 6 September 2017 order on 20 February 2018. In an order filed 23 March 2018, the full Commission affirmed the 6 September 2017 order, stating that, in order to prevail under the North Carolina Tort Claims Act,

a plaintiff must allege and prove “that there was negligence on the part of an officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority that was the proximate cause of the injury and that there was no contributory negligence” on the part of the plaintiff.

The full Industrial Commission held that neither PLS nor the State of North Carolina constitute a state agency under the Tort Claims Act. Additionally, the 23 March 2018 order held that the remainder of Plaintiff’s claims were not negligence claims and therefore were outside the Industrial Commission’s jurisdiction under the Tort

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Claims Act. Plaintiff appeals both the 6 September 2017 order and the 23 March 2018 order.

II. Analysis

Plaintiff's sole argument on appeal is that the Industrial Commission erred in denying Plaintiff's motion for default judgment against the State of North Carolina because the State failed to file and serve an answer to Plaintiff's claim within thirty days of service.

Under the Tort Claims Act, either party may

appeal from the decision of the [Industrial] Commission to the Court of Appeals. Such appeal shall be for errors of law only under the same terms and conditions as govern appeals in ordinary civil actions, and the findings of fact of the [Industrial] Commission shall be conclusive if there is any competent evidence to support them.

N.C. Gen. Stat. § 143-293 (2017). The Tort Claims Act gives the Industrial Commission limited jurisdiction to hear "tort claims against the State Board of Education, the Board of Transportation, and all other departments, institutions and agencies of the State," N.C. Gen. Stat. § 143-291(a) (2017), and to determine

whether or not each individual claim arose as a result of the negligence of any officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, under circumstances where the State of North Carolina, if a private person, would be liable to the claimant in accordance with the laws of North Carolina.

Id.

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In the case before us, the Industrial Commission properly determined it did not have jurisdiction to hear Plaintiff's claim against PLS because PLS was not a department, institution, or agency of the State. Similarly, the Industrial Commission properly determined it did not have jurisdiction to hear Plaintiff's claim against the State and DPS. The Industrial Commission has limited jurisdiction to hear negligence claims; however, Plaintiff's claims against the State and DPS alleged breach of contract and violations of his constitutional rights. Finally, to the extent Plaintiff challenged the policies and procedures of the State and DPS, those challenges are also outside the Industrial Commission's limited jurisdiction under N.C.G.S. § 143-291(a).

Entry of default judgment and default judgment are reviewed for abuse of discretion. *N.C.N.B. v. McKee*, 63 N.C. App. 58, 61, 303 S.E.2d 842, 844 (1983). "Abuse of discretion exists when the challenged actions are manifestly unsupported by reason." *Barnes v. Wells*, 165 N.C. App. 575, 580, 599 S.E.2d 585, 589 (2004) (citation and internal quotation marks omitted).

In the case before us, the Industrial Commission properly determined it did not have subject matter jurisdiction to hear Plaintiff's claim against Defendants. "Where there is no jurisdiction of the subject matter the whole proceeding is void *ab initio* and may be treated as a nullity anywhere, at any time, and for any purpose." *State v. Daniels*, 224 N.C. App. 608, 613, 741 S.E.2d 354, 359 (2012) (citing *High v.*

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Pearce, 220 N.C. 266, 271, 17 S.E.2d 108, 112 (1941)). Therefore, the Industrial Commission did not abuse its discretion by denying Plaintiff's motions for entry of default and default judgment where it found that it did not have jurisdiction to hear Plaintiff's claim. The Industrial Commission's 6 September 2017 order and 23 March 2018 order are affirmed.

AFFIRMED.

Judges HUNTER, JR. and INMAN concur.

Report per Rule 30(e).